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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

IN THE MATTER OF:

BALLY GROUNDWATER CONTAMINATION

BALLY ENGINEERED STRUCTURES, INC.

RESPONDENT

Docket No. III-87-2-DC

Proceeding Under Section 106(a) of the
Comprehensive Environmental Response,
Compensation and Liability Act of
1980, (42 U.S.C. §9606(a)), as amended
by the Superfund Amendments and Re-
authorization Act of 1986, Pub. L. No.
99-499, 100 Stat. 1613 (1986)

ADMINISTRATIVE ORDER BY CONSENT

The parties to this Administrative Order by Consent ("Consent Order") Bally Engineered Structures, Inc. and EPA, having agreed to the entry of this Consent Order, it is therefore Ordered that:

I. JURISDICTION

This Consent Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, ("SARA") Pub. L. No. 99-499, 100 Stat. 1613 (1986), and delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C, the latter of which was signed on April 16, 1984.

The Respondent agrees to undertake all actions required by the terms and conditions of the Consent Order, for implementation of a Remedial Investigation/Feasibility Study ("RI/FS").

The Respondent consents to and will not contest EPA jurisdiction regarding this Consent Order.

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II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondent are (1) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of any hazardous substances, pollutants or contaminants from the Bally Engineered Structures, Inc. Site ("Site") (to be achieved by a "Remedial Investigation"), and (2) to evaluate alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants from the Site (to be achieved by a "Feasibility Study"). The activities conducted pursuant to this Consent Order are subject to approval by EPA and shall be consistent with the National Contingency Plan. ("NCP") 50 Fed. Reg. 47973 (November 20, 1985), codified at 40 C.F.R. Part 300.68.

III. FINDINGS OF FACT

- A. Bally Engineered Structures, Inc. (Respondent) is a Pennsylvania corporation with its principal place of business in the borough of Bally, Berks County, Commonwealth of Pennsylvania.
- B. The Bally Groundwater Contamination Site is an area of groundwater contamination located in the borough of Bally, Berks County, Commonwealth of Pennsylvania.
- C. The Bally Groundwater Contamination Site is proposed to be added to the National Priorities List as established by Section 105 of CERCLA, 42 U.S.C. §9605. 51 Fed Reg. 21099, 21106 (June 10, 1986).
- D. The primary source of the contamination is the Bally Engineered Structures, Inc. property (Facility) which is located near the intersection of State Route 100 and Legislative Route 254 in the borough of Bally.
- E. The facility is approximately 1,000 feet southwest of Bally Municipal well #3, and 2,500 feet southwest of Bally Municipal Well #1. Municipal Well #1 is a backup source of water supply to the Municipal Reservoir, which is a public drinking water source.
- F. The facility, at which insulated structures and structural

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panels are manufactured, was founded by private individuals in the early 1930's, and owned by private individuals until 1972, when the company was sold to the Sunbeam Corporation.

The current facility owner/operator, Bally Engineered Structures, Inc. was formed in 1982 through a corporate acquisition.

G. The hazardous substance 1, 1, 1 trichloroethane (1,1,1, TCA) has been used in manufacturing processes at the facility. Respondent has disposed of all hazardous wastes at offsite facilities during its operations. Other hazardous substances may have been used onsite, and Respondent does not know whether any such substances were disposed onsite by prior owners or operators.

H. Certain facility areas may have been used for onsite treatment, storage or disposal of wastes. These areas were backfilled, and are now vegetated, or paved, or sites of various structures. EPA believes that hazardous substances have been disposed onsite in these areas.

I. Existing groundwater wells at the facility are contaminated with trichloroethene (TCE) and 1,1,1-TCA. Background wells at the facility do not contain these compounds, which indicates an onsite source of contamination.

J. The public water supply system in Bally includes a spring fed reservoir which is not contaminated. Two municipal wells have been constructed to supply water to the reservoir during dry periods, when additional water sources are needed. Municipal Well #3 is contaminated with 1,1,1-TCA and TCE, and has been out of service since the winter of 1982-83. Well #1 has low levels of the same contaminants and 1,1 dichloroethene, but the concentrations of these substances in Well #1 have increased over the past three years. There are approximately 1,200 people who use this public drinking water system.

K. There are 5,200 people living within a three mile radius of the facility who obtain their water from private wells or from the public water supply system in Bally. Because of the natural groundwater flow direction, which is east/northeast, and the strong impact of the municipal wells, it is believed that only one private well is now affected by this contamination. Other wells may be affected in the future by any further migration of contaminants.

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L. TCE is a suspected human carcinogen based on animal studies. 1,1 dichloroethene is a possible human carcinogen. 1,1,1-TCA is not yet classified as to its carcinogenicity. All of these findings are based on EPA guideline documents and classifications published at 50 Fed. Reg. 46880 (November 13, 1985).

M. Over the past twelve months, Respondent has voluntarily studied portions of its own property and surrounding areas to determine the presence and levels of any onsite contamination, the location of any onsite contamination, and the extent of migration offsite in the direction of the public and private wells. The results of this study have been provided to EPA.

IV. CONCLUSIONS OF LAW

A. Bally Engineered Structures, Inc. is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

B. The Respondent is a person as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

C. Hazardous Substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14), have been disposed at the facility and are currently present there.

D. The past, present, and/or potential migration of hazardous substances from the facility constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

E. The Respondent is liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a). Other persons may also be liable.

V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, EPA has determined that:

A. The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

B. EPA has determined that the Respondent is qualified to conduct the RI/FS within the meaning of Section 104(a) of SARA if the Respondent complies with Section VIII of this Consent Order.

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VI. PARTIES BOUND

This Consent Order shall apply to and be binding upon Respondent, and EPA, their agents, successors, and assigns and upon all persons, contractors and consultants acting under or for either the Respondent or EPA or any combination thereof. No change in or ownership corporate or partnership status relating to the Site will in any way alter the status of the Respondent or its responsibility under this Consent Order.

In the event of any change in ownership or control of the Site, Respondent shall notify the EPA in writing at least 30 days in advance of such change and shall provide a copy of this Order to the transferee in interest of the Site, prior to any agreement for transfer.

The Respondent shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Consent Order.

VII. NOTICE TO THE STATE

Notice of issuance of this Order has been given to the Commonwealth of Pennsylvania, pursuant to Section 106(a) of CERCLA. 42 U.S.C. §9606(a).

VIII. WORK TO BE PERFORMED

A. All response work performed pursuant to this Consent Order shall be under the direction and supervision of qualified personnel. Thirty (30) days prior to the initiation of the work set forth below, Respondent shall notify EPA in writing regarding the identity of the personnel to be used in carrying out such work. EPA may disapprove the use of any contractor, subcontractor and/or any supervisory personnel EPA considers for good cause not qualified to perform the work required by this Consent Order or any portion thereof. In the event of a disapproval, Respondent shall notify EPA within sixty (60) days of the identity and the qualifications of the person, contractor or subcontractor that will replace the one that was disapproved. In the event of subsequent disapproval of the replacement, EPA reserves its right under CERCLA and the NCP to conduct a complete RI/FS, or any portion of the RI/FS and to seek reimbursement for the costs thereof.

B. Work shall be performed in accordance with the terms and conditions and schedule of a Scope of Work ("SOW") to be submitted by Respondent

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within ninety (90) days of the effective date of this Consent Order, as defined in Section XXI, Effective Date and Subsequent Modification. The SOW shall describe the manner in which the RI/FS shall be performed and set forth a schedule for initiation and completion of each element. Such elements shall include, but not be limited to, a Remedial Investigation Site Operations Plan, including QA/QC plans and health and safety plans, preliminary and final Remedial Investigation Reports and preliminary and final Feasibility Study Reports. The SOW shall be prepared in accordance with the NCP and EPA RI/FS guidance documents dated June, 1985.

Respondent has submitted the report of its initial study of this site, and proposes to complete the RI/FS based on this work. Respondent shall submit all data required by EPA for review of this work on or before its submission of the "SOW", and EPA agrees to review such work and determine whether such work may be used in the performance of the RI portion of the study required by this Order. EPA agrees to accept this work only if the data are valid as determined by EPA, even though performance of this work may not have been done in exact accordance with EPA guidance documents. Respondent shall present its initial proposed "SOW" with these study results incorporated, pending EPA review of the prior work.

Within sixty (60) days after receipt of the SOW by EPA, EPA shall notify Respondent in writing of EPA's approval or disapproval of the SOW or any part thereof. In the event of any disapproval, EPA shall specify the deficiencies in writing. Within forty-five (45) days of the receipt of any EPA notification of SOW disapproval, the Respondent shall amend and submit to EPA a revised SOW that responds to and/or remedies the specified deficiencies. If, after such revision, EPA continues to disapprove, Respondent shall incorporate EPA's proposed additions and amendments to the SOW. EPA reserves the right to conduct a complete RI/FS on any portion thereof pursuant to CERCLA and the NCP and to seek reimbursement for the costs thereof. Upon approval by EPA the SOW shall be incorporated into this Consent Order and the terms and schedules therein shall become requirements of this Order.

C. A Remedial Investigation Site Operations Plan ("RISOP") shall be submitted to EPA in accordance with the schedule contained in the approved SOW. The RISOP will specify, at a minimum, the number, time, location, and manner of soil, air, surface water and groundwater samples to be taken, which shall be sufficient to determine the nature and extent of the threat presented by the release of hazardous substances at the Site and to evaluate proposed remedies. Within sixty (60) days after receipt of the RISOP, EPA shall notify the Respondent in writing of EPA's approval or disapproval of the RISOP or any part thereof. In the event of any disapproval, EPA shall specify the deficiencies in writing. Within forty-five (45) days of the receipt of EPA notification of RISOP disapproval, the Respondent shall amend and submit to EPA a revised RISOP that responds to and/or remedies the specified deficiencies. Upon approval by EPA the

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RISOP shall be incorporated into this Consent Order and the terms and schedules shall become requirements of this Consent Order. If after such revision, EPA continues to disapprove, Respondent shall incorporate EPA's proposed additions and amendments into the RISOP. In the event of subsequent disapproval of the revised RISOP, EPA reserves its right to conduct a complete RI/FS, or any portion thereof, pursuant to CERCLA and NCP and to seek reimbursement for the costs thereof.

D. Beginning 30 days subsequent to the date on which the RISOP is approved by EPA the Respondent shall provide EPA with a progress report for each preceding 30 day period. At a minimum, these progress reports shall include: 1) a description of the actions that have been taken toward achieving compliance with this Consent Order; 2) all results of sampling, tests, analytical data and interpretations and all other information received by the Respondent; 3) a description of all data anticipated and activities scheduled for the next month; and 4) a description of any problems encountered.

E. EPA shall review the preliminary and final Remedial Investigation Reports required by the approved SOW and subsequently the Preliminary and Final Feasibility Studies required by the approved SOW. Such reports shall be submitted to EPA in accordance with the schedule contained in the approved SOW. Within sixty (60) days of receipt by EPA of such reports, EPA shall notify Respondent in writing of its approval or disapproval of these reports or any part thereof. In the event of any disapproval, EPA shall specify the deficiencies in writing. Within forty-five (45) days of receipt of notification of preliminary or final report disapproval, the Respondent shall amend and submit to EPA a revised report that responds and/or remedies the specified deficiencies. If after such revision, EPA continues to disapprove, Respondent shall incorporate EPA's proposed additions and amendments into the preliminary or final report. In the event of subsequent disapproval of either report, EPA retains its right to amend such reports, to perform additional studies, and to complete the RI/FS or any portion thereof pursuant to CERCLA and the NCP and to seek reimbursement for the costs thereof.

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F. In addition to the referenced EPA Guidance and NCP criteria, the Respondent shall address the cleanup standards required to be taken into account by the President as set forth in Section 121 of the Superfund Amendments and Reauthorization Act of 1986 ("SARA").

IX. DESIGNATED PROJECT COORDINATORS

On or before the effective date of this Consent Order, EPA, and the Respondent shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondent and EPA, and all documents, including reports, approvals, and other correspondence, concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed to the Project Coordinators by certified mail.

EPA and the Respondent shall each have the right to change their respective Project Coordinator(s). Such a change shall be accomplished by notifying the other party in writing at least fifteen (15) days prior to the change.

The EPA-designated Project Coordinator shall have the authority to, inter alia, halt, modify, conduct, or direct any tasks required by this Consent Order and/or undertake any response actions or portions thereof when conditions present a threat to public health or welfare or the environment as set forth in 40 C.F.R. §300.65(b). In the event that work is halted or changed under order of the EPA Project Coordinator pursuant to this paragraph, the approved SOW and RISOP shall be reviewed and may be revised by agreement of the Respondent and EPA in accordance with the procedures in Section VIII, Work To Be Performed, above, and, in any case, the schedule for completion of the work set forth in the approved SOW and RISOP shall be extended to the extent of such delay. The absence of the EPA Project Coordinator from the area under study pursuant to this Consent Order shall not be cause for the stoppage of work.

X. QUALITY ASSURANCE

The Respondents shall use Quality Assurance/Quality Control practices and procedures, including chain-of-custody procedures, in accordance with guidance provided in "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, EPA-330/9-78-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/80, while conducting all sample collection and analysis activities required by this Consent Order. The Respondents shall consult

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with EPA in planning for, and prior to, all sampling and analysis required by the approved Work Plan. In order to provide adequate Quality Assurance and Quality Control regarding all samples collected and analyzed pursuant to this Consent Order, the Respondents shall:

1. Use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.
2. Ensure that EPA personnel and/or EPA authorized representatives are allowed reasonable access to the laboratory(s), records and personnel utilized by the Respondents for analysis of samples collected pursuant to this Consent Order.
3. Prepare a Quality Assurance Project Plan ("QAPjP") for the sample collection and analysis to be conducted pursuant to this Consent Order. The QAPjP is to be submitted to the EPA Project Coordinator for review and approval prior to initiating any field investigations. The QAPjP (and Sampling Plans if prepared a separate documents) must be submitted to EPA as part of the site Work Plan required in Section IV and IX of this Consent Order. The purpose of the plan is to present, in detail, the data quality objectives, sample collection procedures, and data analysis processes and the procedures to ensure that the objectives are met. QAMS-005/80 shall be used as guidance in the preparation of the QAPjP; additional guidance may be provided by EPA as requested.
4. Agree that laboratory(s) analyzing samples required by this Consent Order shall use the methods and submit deliverables delineated in the current "Statement of Work of the EPA Contract Lab Program." Current copies are available from the Environmental Services Division ("ESD") QA Section, Annapolis, Maryland at (301) 224-2740. If any parameter to be analyzed for is not one of the parameters for which CLP methods are available, the lab shall use methods which are EPA-approved (and which are to be described in the QAPjP).
5. Agree that a laboratory(s) analyzing samples pursuant to this Consent Order must demonstrate its capability to perform analyses in compliance with CLP requirements

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through the analysis of Performance Evaluation ("PE") samples prior to conducting any analysis. Analysis of PE samples prior to conducting any analysis. Analysis of PE samples may be waived if the laboratory has analyzed PE samples submitted by EPA or a state agency within the past six (6) months. Documentation of such PE sample analysis must be submitted to the EPA Project Coordinator for verification.

6. Conduct an audit of the laboratory(s) that will analyze samples from the site at some point during the time the laboratory(s) is conducting analyses (to be specified in the QAPjP). The audit will be conducted to verify analytical capability. Auditors should conduct lab audits according to procedures available from the ESD QA Section. Audit reports must be submitted to the EPA site Project Coordinator within fifteen (15) calendar days of completion of the audit. The Respondents must report serious deficiencies and corrective actions to be immediately taken within twenty-four (24) hours of the time the Respondents knew or should have known of the deficiency. Laboratories which are Superfund Contract Labs ("CLP Labs") need not be audited.
7. Conduct at least one appropriate field audit (to be described in the QAPjP) during initial sampling activities to verify that field samplers are correctly following sampling procedures described in the quality assurance and/or sampling plans. A report of the field audit must be sent to the EPA Project Coordinator within fifteen (15) calendar days of completion to the audit. Respondents must report serious deficiencies and corrective actions to be immediately taken within twenty-four (24) hours of the time the Respondents knew or should have known of the deficiency.
8. Provide data validation of analyses done by the laboratory(s) (to be described in the QAPjP). This data validation shall determine data usability and shall be performed in accordance with the Functional Guidelines for Data Review (available from ESD QA Section) for data derived by CLP methods, or with the QA/QC criteria set forth in the method, if other than a CLP method. For methods lacking QA/QC data validation protocols the Respondents must establish validation criteria such as those in Section 8 of the EPA Series Methods in 40 C.F.R. §136. The appropriate quality

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assurance data validation summary reports should be submitted, along with sample data and summary sheets, to the EPA Project Officer at the time final sample results are provided to EPA.

In the event that the Respondents fail to use the QA/QC practices and procedures as outlined herein, EPA reserves the right to conduct a complete RI/FS or any portion thereof pursuant to its authority under CERCLA, to seek reimbursement from any Responsible Parties in a proceeding independent of this Consent Order and/or to seek any other appropriate relief.

XI. SITE ACCESS

To the extent that property included in the area under study is presently owned or controlled by parties other than Respondent to this Consent Order, the Respondent will use all reasonable efforts obtain Site access agreements from the present owners within sixty (60) days of approval of the RISOP. Such agreements shall provide reasonable access for EPA, and the Respondent and their authorized representatives. In the event that the property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondent shall so notify EPA. The Respondents shall also notify EPA of all efforts to obtain such agreements. EPA shall then take steps to provide such access. If EPA is unable to provide such access, the approved, SOW and/or RISOP may be modified by Respondent, with EPA's approval, to take account of such lack of access, in accordance with the procedures in Section VIII, Work To Be Performed, above. Respondent shall not be required to pay any property owner an unreasonable fee for site access under this order.

EPA and/or its authorized representatives shall, upon reasonable prior notice, have the authority to enter and freely move about all property of the Respondent subject to this Consent Order at all reasonable times for the purpose of, inter alia: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writing, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. Nothing herein shall be interpreted as limiting the inspection authority of EPA under federal law. All parties with access to the Site pursuant to this paragraph shall comply with all approved and applicable health and safety plans.

XII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

The Respondent shall make available to EPA the results of all sampling and/or tests or other data generated by the Respondent, or on the Respondent behalf, with respect to the implementation of this Consent

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Order, and shall submit these results in monthly progress reports as described in the approved SOW. EPA shall make available to the Respondent the results of sampling and/or tests or other data similarly generated by EPA.

At the request of EPA, the Respondent shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by the Respondent pursuant to the approved SOW and/or RISOP. The Respondent shall notify EPA not less than five days in advance of any such sample collection activity.

The Respondent may assert a claim of business confidentiality covering part or all of the information or documentation requested by or provided under this Consent Order in the manner described in 40 C.F.R. §2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. §2.205 at the time the assertion is made. Analytical data shall not be claimed as confidential by the Respondent.

Information subject to such a claim will be handled in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information or documentation when it is submitted or made available to EPA, it may be made available to the public by EPA without further notice to the Respondent.

XII. RECORD PRESERVATION

EPA and the Respondent agree to preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and comments in its possession that relate in any way to the Site, despite any document retention policy to the contrary. Respondent will use its best efforts to obtain copies of all documents that relate in any way to the Site and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this six-year period, the Respondent shall notify EPA at least thirty (30) calendar days prior to the destruction of any documents that relate to this Consent Order. Upon request by EPA, the Respondent shall make available to EPA such records or copies of any such records.

XIII. DISPUTE RESOLUTION

If the Respondent objects to any EPA notification of deficiency, disapproval or other EPA action taken pursuant to this Consent Order the Respondent shall notify EPA in writing of their objection(s) within

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fourteen (14) days of receipt of such notification or action. EPA and the Respondent shall have an additional twenty-one (21) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this twenty-one (21) day period, EPA shall provide a written statement of its decision to the Respondent.

XIV. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

For each week that the Respondent fails to submit a report or document or otherwise fails to comply with the requirements of this Consent Order at the time and in the manner set forth herein, or in the approved SOW or RISOP, the Respondent shall be liable upon demand to EPA for the sums set forth below as stipulated penalties. Checks shall be made payable to the Hazardous Substance Response Trust Fund. Checks should be addressed to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 371003M
Pittsburgh, PA 15251

Stipulated penalties shall accrue in the amount of \$250 for the first week, or any portion thereof, and \$500 for each week thereafter, or any portion thereof.

XV. FORCE MAJEURE

The Respondent shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order, caused by circumstances beyond the control of the Respondent. Such notification shall be made verbally as soon as possible but no later than four (4) business days after any such delay or anticipated delay and in writing no later than seven (7) days after becoming aware of such delay or anticipated delay. The written notification shall describe fully the nature of the delay, the reasons the delay is beyond the control of Respondent, the actions that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay, and the timetable according to which the actions to mitigate, prevent and/or minimize the delay will be taken. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

Any such delay that results from circumstances beyond the control of the Respondent, and that cannot be overcome by due diligence on the Respondent's part, shall not be deemed to be a violation of its obligation(s) under this Consent Order, and shall not make the Respondent liable for the stipulated penalties contained in Section XIV, "Delay in Performance and Stipulated Penalties", above. To the extent a delay is caused by circumstances beyond the control of the Respondent, the schedule affected by the delay shall be extended for a period equal to the

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delay directly resulting from such circumstances. Increased costs of performance of the terms of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent.

Failure of the Respondent to comply with the notice requirements, of this paragraph shall constitute a waiver of the Respondent's right to invoke the benefits of this paragraph with respect to that event.

In the event that EPA and the Respondent cannot agree that any delay in compliance with the requirements of this Consent Order has been or will be caused by circumstances beyond the reasonable control of the Respondent the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution Section, Paragraph XIII, of this Consent Order". The Respondent shall have the burden of proving that the delay was caused by circumstances beyond their control and that the Respondent took all reasonable measures to avoid or minimize delay.

XVI. RESERVATION OF RIGHTS

Except as expressly provided in this Consent Order, (1) each party reserves all rights and defenses it may have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including the right to seek injunctive relief, imposition of statutory fines, and/or punitive damages.

As provided by this Consent Order, EPA expressly reserves its right to disapprove of work performed by the Respondent and reserves its right to request that the Respondent perform response actions in addition to those required by or as modified in the approved SOW and RISOP, if it determines that such actions are necessary. In the event that the Respondent declines to perform such additional and/or modified actions, EPA reserves the right to undertake such actions. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and seek reimbursement for any costs incurred.

XVII. REIMBURSEMENT OF COSTS

At the end of each year, EPA shall submit to the Respondent an accounting of all response and oversight costs incurred by the U.S. Government with respect to this Consent Order. Such costs shall include

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the cost of personnel, overhead and analysis of any samples split with Respondent. The accounting shall be accompanied or preceded by specific documentation of the work performed including, when requested, all QA/QC data and reports. The Respondent shall, within 30 calendar days of receipt of that accounting, and proper documentation, remit a check for the amount of those costs made payable to the Hazardous Substance Response Trust Fund. Checks should specifically reference the Site and be addressed to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 371003M
Pittsburgh, PA 15251

A copy of the transmittal letter should be sent to the EPA Project Coordinator.

The Respondents can object to any portion of the costs as being inconsistent with the NCP and any such portion shall be subject to the Dispute Resolution Procedures set forth in Section XIII.

EPA reserves the right to bring an action against the Respondent pursuant to Section 107 of CERCLA, 42 U.S.C. Section 9607, for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by the Respondent, as well as any other costs incurred by the United States in connection with response actions conducted pursuant to CERCLA at the Site.

XVIII. OTHER CLAIMS

Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not bound by this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 40 U.S.C. Section 9611(a)(2).

XI. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations.

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XX. PUBLIC COMMENT

Upon approval by EPA of the Feasibility Study Final Report, EPA shall make such report available to the public for review and comment for, at a minimum, a twenty-one (21) day period, pursuant to 40 C.F.R. Section 300.67(d) (50 Fed. Reg. 47978, 11/20/85). Following the public review and comment period, EPA shall notify the Respondent which remedial action alternative is approved for the Site. However, this Order does not require the performance of any remedial action by Respondent.

XII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

The effective date of this Consent Order shall be the date on which it is signed by EPA.

This Consent Order may be amended by mutual agreement of EPA, and the Respondent. Such amendments shall be in writing and shall have as their effective date, the date on which such amendments are signed by EPA. Minor modifications to the requirements of the SOW or RISOP may be made by mutual agreement of the Project Coordinators. Such modifications shall be made by exchange of letters by the Project Coordinators and shall, have as an effective date, the date on which the letter from EPA's Project Coordinator is signed.

Any reports, plans, specifications, schedules, or other submissions required by this Consent Order are, upon approval by EPA incorporated into this Consent Order. Any non-compliance with such EPA approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order and will subject the Respondent to the requirements of Section XIV, "Delay in Performance/and Stimulated Penalties", above.

No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules, or other submissions by the Respondent or the requirements of this Consent Order will be construed as relieving the Respondent of its obligation to obtain formal approval when required by this Consent Order.

XXII. TERMINATION AND SATISFACTION

The Respondent's obligations to EPA under this Consent Order shall terminate and be deemed satisfied upon the Respondent's receipt of written notice from EPA that the Respondent has demonstrated, to the satisfaction of EPA, that all the terms of this Consent Order have been completed.

BY: Thomas W. Dutton
President

DATE: Dec. 30, 1986

BY: [Signature]
Regional Administrator,
Region III

Date: 1/28/87

U.S. Environmental Protection Agency

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IN THIS MATTER
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IS A TRUE AND CORRECT COPY OF THE
WHICH THE WITNESSES HAVE SIGNED